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IN THE SUPREME COURT OF THE UNITED STATES

1965

NO. 226

MRS. CORAL B. JONES, ET AL
Appellants

VS.

W. P. H. McFADDIN, ET AL
Appellees

JURISDICTIONAL STATEMENT

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PAGE

INDEX

Attorneys for Appellees 2

Jurisdictional Statement 5

Proof of Service 8

Appendix "A" 11

Appendix "B" 12

Appendix "C" 16

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IN THE SUPREME COURT OF THE UNITED STATES

NO._____

MRS. CORAL B. JONES, ET AL
Appellants
VS.
W. P. H. McFADDIN, ET AL
Appellees

JURISDICTIONAL STATEMENT

MAY IT PLEASE THE COURT:

(a) The opinion sought to be reviewed by this Court is: Mrs. Coral B. Jones, et al, appelants, vs W. P. H. McFaddin, et al, appellees, reported in 382 S. W. 2d 277.

This was an action of trespass to try tite filed by the appellants in the 58th Judicial District Court of Jefferson County, Texas against the appellees to recover a grant of land made on February 14, 1835 by the Mexican State of Coahuila and Texas to its Mexican citizen, one Pelham Humphries. The appellees answered by affirmatively plead ng the various statutes of limitation of Texas, The appellees filed a motion for summary judgment setting up the said statutes of limitation on June 14, 1963. On June 17, 1963 the appellants filed a motion to strike the appelees' plea of the statutes of limitation. On June 26, 1963 the said District Court overruled the motion of appellants' to strike the appellees' plea of the statutes of imitation as shown by order in Appendix "A"; and on September 18, 1963, the said District Court sustained the appellees' motion for a summary judgment based on adverse possession under the statutes of limitation as shown by judgment in Appendix "B".

This cause was duly appealed to the Court of Civil Appeals, Sixth Supreme Judicial District at Texarkana, Texas which Court rendered its decision on September 1, 1964 sustaining the said District Court. The opinion is in Appendix "C". A rehearing was denied on September 22,

1964 and an Application for a Writ of Error was duly made to the Supreme Court of Texas, which Court finally refused the application for a Writ of Error on January 13, 1965.

Notice of appeal to the United States Supreme Court was filed in the Court of Civil Appeals, Sixth Supreme Judicial District of Texas on April 10, 1965, with proof of service on all interested parties.

The appellants invoked the treaty between the United Mexican States and the United States of America signed on February 2, 1848 at the City of Guadalupe Hidalgo cited in 9 U. S. Statutes at Large on page 929 as follows:

> "In said territories, property of every kind, now belonging to Mexicans not established there, shall be invioably respected. The present owners, the heirs of these, and all Mexican who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to the citizens of the United States."

The Constitution of the United States, Art. 6, Sec. 2 provides: "_____, and all Treaties made, or which shall be made, under the Authority of, the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The appellants also invoked the International law as stated by Joseph M. White in Laws, Charters and Local Ordinances of the Government of Great Britain, France and Spain together with the Laws of Mexico and Texas in Vol. 1 at introductory page xi as follows:

> "By the principles of International law, neither cession by treaty, nor revolution by force, affect the laws of meum and tumm. Political and military revolutions change jurisdiction and sovereignty, whilst the relations of individuals to each other remain the same.
> 'The laws of Spain, therefore, modified by the laws of Mexico and Texas, so far as the Convention and Congress of the latter have acted by positive constitutional, or legislative enactments, are the present laws of that young and rapidly increasing Republic. Whatever changes in its political organization or Civil Code, the wisdom of its rulers may prescribe, it is evident that their provisions must govern only the lex fori, as to all past transactions, whilst the lex oci contractus must govern the adjudications."

The questions presented by this appeal are:

(1) Where the sovereignty of the soil granted land to its subject under statutory law that it was never to be held in mortmain by any title whatever, and the grant itself provided that it was never to be conveyed in mortmain, can a corporation aggregate, ecclesiastical or temporal, acquire title to the land by adverse possession under the statutes of limitation of Texas regardless of the condition or restriction in the grant, and regardless of the fact that at the time the grant was made the law of the land restricted the alienation of this land in mortmain?

(2) The grant itself contains the followine clause:

"Therefore, exercising the authority vested in me by the same law and consequent instructions, I issue the present title and order the testimonio taken from it and delivered to the interested party in order that he may possess and enjoy the tract, he, his children, heirs and successors, or whoever from him or from them shall have cause or right."

When the sovereignty of the soil placed this restriction in the grant, can anyone acquire title to this grant of land by adverse possession under the statutes of limitation of Texas so long as no right to the possession or enjoyment of this land has ever been acquire out of the grantee, Pelham Humphries, or acquired out of his heirs and successors?

These questions were raised by motion of appellants' to strike the plea of the statutes of limitation in the District Court as shown in the transcript, the record of the District Court on page 412; and as an assignment of error and motion for rehearing to the Court of Civil Appeals; and in the appellants' Application for a Writ of Error, and in the motion for a rehearing in the Supreme Court of Texas.

These questions were not passed upon in any of the said Courts of Texas. If either one of these questions were decided in the appellants' favor, the appellees would have no bases to contest the appellants' title to this grant of land.

Respectfully submitted,

W. T. WEIR
P. O. Box 72
Carthage, Mississippi

William Glover
2239 West Alabama Street
Houston 6, Texas
Attorneys for Appellants

PROOF OF SERVICE

I, the undersigned W. T. Weir, an attorney of record for Mrs. Coral B. Jones, et al, appellants herein, depose and say that on the_____day of_____, 1965, I served a copy of the foregoing Jurisdictional Statement to the Supreme Court of the United States on the following named appellees herein by depositing the same in the United States Post Office at Carthage, Mississippi, with air mail postage prepaid addressed to the counsel of record for each appellee as follows:

Beck & Beck, 413 American National Bank Bldg., P. O. Box 149, Beaumont, Texas, counsel of record for J. R. Beck, appellee.

Blades, Crain Slator & Winters, 1009 Jacinto Building, Houston 2, Texas, Counsels of record for Wheeler Nazro, appellee.

Butler, Binion, Rice & Cook, 1100 Esperson Building, P. O. Box 2200, Houston 1, Texas, counsels of record for Margaret Salter Coleman, Clyde L. Coleman and Rycade Oil Corp., appellees.

Joiner Cartwright, Jack Hardy, J. L. LyBrand, P. O. Box 2831, Beaumont, Texas, Counsels of record for Sun Oil Company and Sun Pipe Line Company, appellees.

William S. Clark, 1149 Texaco Bldg., Houston, Texas, counsels of record for Texaco, Inc., appellees.

Eldridge, Goggans, Davidson & Silverberg, 1217 First National Bank Building, Dallas 2, Texas, counsels of record for Charlotte Weiss, appellee.

William B. Ferguson, 1708 First City National Bank Building Houston 2, Texas, counsels of record for Ima Hogg, Margaret Wells Hogg and Alice Nicholson Hanszen, appellees.

Keith, Mehaffy, McNichols and Weber, 240 Kaufman Trust Bldg., Beaumont, Texas, counsels of record for Texas and New Orleans Railroad Company and Wilson-Broach Company, appellees.

Fred A. Lange, P. O. Drawer, 2100, Houston, Texas, counsels of record for Gulf Oil Corp., and Gulf Refining Company, appellees. W. B. Langworthy, P. O. Box 336, Angleton, Texas, counsel of record for Wilford L. White, appellees.

Samuel Lipscomb, 395 - 10th Street, Beaumont, Texas, counsel of record for Socony Mobil Oil Company, Inc., appellees.

Doyle McDonald, 315 Cotton Exchange Bldg., Galveston, Texas, counsel of record for Lillian C. Coxe, appellee.

McLeod, Mills, Shirley & Alexander, 801 Santa Fe Bldg., Houston 2. Texas, counsels of record for First National City Trust Co. of New York, one of the Trustees under the will of John Sealy, Deceased; The Sealy & Smith Foundation for the John Sealy Hospital, Mrs. Kliburn Moore, being one and same person as K. Moore, Caroline Sealy Livermoore Ross, First National Bank of Galveston, representing the Estate of B. D. Moore, Deceased, B. D. Moore, Jr., and Charles Moore, appellees.

Moore & Moore, 1109 Petroleum Bldg., Beaumont, Texas, counsels of record for J. H. McNeill, Jr. and J. H. McNeill Jr., guardian of Jerry Hasler McNeill and Jack Gober McNeill, appellees.

Clark Murray, P. O. Box 246, Floreville, Texas counsels of record for Annie Higgins, appellee.

Orgain, Bell & Tucker, First Federal Savings Bldg., Beaumont, Texas, counsels of record for Gulf State Utilities Co., Kansas City Southern Railroad Co., Mrs. Joanna Nazro Mullen, Charles T. Smelker, Herbert A. Smelker and Thomas V. Smelker, appellees.

Edgar Pfeil, P. O. Box 743, Houston, Texas, counsels of record for Ruth McLean Bowman & Frost National Bank of San Antonio, Texas, Substitute Trustee for McLean Trust & Independent Executor of the Estate of Marrs McLean, Deceased, and Edwin J. Marshall III, appellees.

E. W. Easterling, 711 Beaumont Savings Building, Beaumont, Texas, counsel of record for Douglas D. Hale Sr., and Jessamine H. Birdwell, as Executor and Executrix of the Estate of Ida J. Smith, Deceased, and Douglas D. Hale, Sr., Jessamine H. Birdwell, joined herein by her husband, Seth H. Birdwell and Elenore Campbell joined hereby by her husband, Hugh Campbell and Lois Davenport, joined herein by her husband, Jerry Davenport, as heirs and legatees under the Last Will and Testament of Ida J. Smith, Deceased, appellees.

William G. Ross, Jr., 815 American National Bank Building, Beaumont, Texas, counsel of record for Junker Spencer & Texas Rice Land Co., appellees.

Strong, Moore, Pipkin, Strong & Nelson, 319 McFaddin Bldg., P. O. Box 1632, Beaumont, Texas, counsel of record for the First National Bank of Beaumont and the First National Bank of Beaumont Trustee for the Estate of Estella G. Schingler, Deceased, and Pan American Petroleum Corp. and Indiana Oil purchasing Co. (formerly) Stanolind Oil Purchasing Co.,) appellees.

Vinson, Elkins, Weems & Searls, 2013 First City National Bank Bldg., Houston 2, Texas, counsels of record for Texas Eastern Transmission Corp., Lillian S. Ring, Roland Ring, Gregg Ring and Sandiford Ring, Caroline Weiss Law, appellees.

George A. Weller, P. O. Box 350, Goodhue Building, Beaumont, Texas counsel of record for W. P. H. McFaddin, J. L. C. McFaddin, Mamie McFaddin Ward, Divernon McFaddin Cordts & husband, E. G. Cordts, Walter F. Myers, G. Frank Myers, Unity Oil Company, E. I. Dupont de Nemours & Co., and Spindletop Engineering and Construction Corp, appellees.

Williams, Lee and Lee, 1504 Houston Chamber of Commerce Building Houston, Texas, counsels of record for Texas Gulf Sulphur Co., Daisy McCollum, Guardian of Dorothy McCollum, Mrs. Gladys LeBaron Baker, Mrs. Blanche LeBaron Gruver, C. M. Frost and P. O. Frost, appellees.

Beatty Corp., whose address is P. O. Box 62, Anaheim, California.

Houston Oil Co., of Texas, whose address is P. O. Box 2412, Houston, Texas.

Lone Acre Oil Company, whose address is P. O. Box 3044, Beaumont, Texas.

Sunset Oil Company, whose address is The Citizens National Bank of Abilene, Texas.

Pat T. Peyton, Jr., 1111 San Jacinto Building, Beaumont, Texas, counsel of record for Charles R. Crocker; Pauline Mayer; Alice L. Keith Indiv. and as Ind. E. of the Est. of J. H. Keith, Deceased; W. D. Gordon; Frank R. Arthur; Winston Arthur; Herbert E. Neuhaus; Hattie E. Neuhaus; Jessie C. Push; Marie Cloud Mahaf-

fey; Annie Susan Preston; Louise Hopkins; W. W. Sutcliff, Jr., Vesta Ewing Veatch; Beatty Corporation; George Sarpy; Mack C. Milner, James W. Howell; Minter Somerville Hooker; Theodore C. Heisig; Gladys E. Combes; Abbot C. Combes, Jr., H. Hardie Robinson Est.; James A. Crocker; Lisa Somerville; H. R. McLaughlin; Kathryn McLaughlin; Frances McLaughlin; Dorothy McLaughlin; Clark R. McLaughlin, Jr.; Robert B. McLaughlin; Myrtle Giles Cloud; Angie Clendening; Blanch E. Cauthen; Edith E. Preston Parnell; John O. Davis; Est. of Harvey M. Sheperd; Frank W. Sheperd; Virginia Cloud Carter; Annie C. Maclure; Ida Loyd Swayne and Margaret Locke; appellees.

Marcus & Weller, P. O. Box 350, Beaumont, Texas; and Strong, Pipkin, Strong and Nelson, McaFddin Building. P. O. Box 1632, Beaumont. Texas; and Orgain, Bell & Tucker, First Federal Savings Building, Beaumont, Texas; and Cartwright, Hardy & LyBrand, P. O. Box 2831, Beaumont, Texas; and William Clark, Texaco Building, Houston, Texas; and Jessie J. Lee and Tom Lee, 1504 Houston Chamber of Commerce Building. Houston, Texas; and Samuel C. Lipscomb, 395 Tenth Street, Beaumont, Texas; counsels of record for the other appellees.

W. T. Weir

W. T. Weir
P. O. Box 72
Carthage, Mississippi

Subscribed and sworn to before me, at Philadelphia, Mississippi this the 26 day of May, 1965.

Alice Lovorn

Alice Lovorn
Notary Public

My Commission Expires February 15, 1966.

APPENDIX "A"

No. A76,582

MRS. CORAL B. JONES, ET AL plaintiffs, VS. W. P. H. McFADDIN; ET AL, defendants	IN THE 58th DISTRICT COURT OF JEFFERSON COUNTY, TEXAS

On this the 26th day of June, A. D., 1963, came on to be heard the Motion of the plaintiffs whose names are listed in the plaintiffs' second amended petition filed herein by and through their attorneys of record, W. T. Weir of Philadelphia, Mississippi, and William Glover of Houston, Texas, being a motion to strike certain pleadings, and which said motion to strike was filed June 17th, 1963, at 2:09 P. M. in the office of the District Clerk of Jefferson County, Texas; and said motion to strike above described having been duly and fully argued and presented to the Court; and the Court, having duly considered the same, is of the opinion and so finds that the said motion to strike filed by said plaintiffs on June 17, 1963, at 2:09 P. M. should be in all things overruled by the Court;

It is therefore, ORDERED, ADJUDGED and DECREED by the Court that the said motion to strike be, and it is hereby in all things overruled, to which ruling of the Court the plaintiffs did then and there in open Court take their exception by and through their attorney of record, Mr. W. T. Weir.

DONE, RENDERED and ENTERED this the 26th day of June, A. D. 1963, at 2:30 P. M.

/s/ Jack Brookshire
Judge Presiding

APPENDIX "B"

No. A-76582

MRS. CORAL B. JONES, ET AL VS. W. P. H. McFADDIN, ET AL	IN THE DISTRICT COURT OF JEFFERSON COUNTY, TEXAS

Be it remembered that on the 12th day of August, 1963, the motions for summary judgment filed in this cause by the defendants W. P. H. McFaddin, Jr., J. L. C. McFaddin, DiVernon McFaddin Cordts and Husband, E. G. Cordts, Mamie McFaddin Ward, Unity Oil Company, Walter F. Myers, G. Frank Myers, E. I. DuPont de Nemours and Company, Inc., Spindletop Engineering and Construction Corporation, Pan American Petroleum Corporation; Indiana Oil Purchasing Company, Gulf States Utilities Company, Kansas City Southern Railroad Company, Sun Oil Company, Sun Pipe Line Company, Texaco, Inc., Texas Gulf Surphur, Socony-Mobile Oil Company, Inc., Gulf Refining Company, Gulf Oil Corporation, Lillian S. Ring, Roland Ring, Gregg Ring, Sandiford Ring, Charles T. Smelker, Mrs. Joanna Nazro Mullen, Herbert A. Smelker, Thomas V. Smelker, First National City Trust Company, one of the trustees under the will of John Sealy, Deceased, Caroline Sealy Livermore Ross, The Sealy and Smith Foundation for the John Sealy Hospital, First National Bank of Galveston, representing the estate of B. D. Moore, Deceased, B. D. Moore, Jr. and Charles H. Moore, Mrs. Kilburn Moore also known as K. Moore, Rycade Oil Company, Margaret Salter Coleman, Clyde L. Coleman, Texas Eastern Transmission Corporation, Defendants represented by Pat T. Peyton, Jr., attorney ad litem, and other defendants who adopted said original motion for summary judgment, came on for hearing; and except as hereinbelow set out in Exceptions one, two and three all plaintiffs, all intervenors and all defendants duly appeared in person or by their respective attorneys of record and announced ready for trial on the motions for summary judgment.

Exception One: At the request of Hattie Belle McDaniel Owens and husband, Robert B. (Bob) Owens, and Walter McDaniel, intervenors suing herein by their attorney, Honorable L. R. Echols, their cause of action is in all things severed from this cause and shall be docketed in this Court under the number 76582-B but remain styled as this main cause, and in all subsequent portions of this decree refer-

ences to intervenors shall in no manner affect or adjudicate any claim or right of said above named intervenors.

Exception Two: Heretofore certain persons intervened herein by petition filed by Andrew A. Wassick, their attorney of record, but prior to this hearing filed nonsuit and were duly dismissed as parties from this cause, so that subsequent references in this decree to intervenors shall in no manner affect or adjudicate any claim or right of said intervenors heretofore dismissed without prejudice from this cause.

Thereupon the plaintiffs, the defendants, and the intervenors remaining as parties herein, all in open court announced ready for trial on said motion for summary judgment. The plaintiffs appeared in person or by their attorneys of record, W. T. Weir and William Glover; the intervenors appeared by their attorneys of record, James G. Brady and Wm. R. Thielen, respectively. The defendants appeared by their several attorneys of record, and certain of the defendants having been duly cited by publication of citation to appear and answer in this cause, they appeared by the Honorable Pat C. Peyton, Jr., a practicing attorney at this Bar, who heretofore was appointed by the Court to file answer for and to represent said defendants so cited by publication, their names being hereinafter listed under the heading "Defendants Cited by Publication." All parties, the plaintiffs, the defendants and the intervenors are hereinbelow named:

(The Court herein listed the plaintiffs, the defendants, and the intervenors.)

Whereupon the Plaintiffs and Intervenors remaining as parties plaintiff herein and the Defendants presented their pleading, Motions for Summary Judgment, the answers thereto and supporting affidavits, stipulations and admissions of counsel in open court, which with all matters before the Court were taken under advisement; and it appearing to the Court that the Defendants' Motions for Summary Judgment were in due and proper form supported by proper and adequate affidavits showing that Plaintiffs' and Intervenors' title to the Pelham Humphries League of land in Jefferson County, Texas, if any they ever had, to have been divested out of them by the continuous open adverse possession of the Defendants and their predecessors in title, and that defendants and those under whom they hold, have title under the statutes of limitations; and it further appearing to the Court that said Motions for Summary Judgment were duly and timely filed and that proper ser-

vice of such Motions was duly and timely made in the manner required by law, and counsel for Plaintiffs and Intervenors appeared in opposition to such Motions; and it further appearing that the affidavits and answers to such Motions for Summary Judgment filed by Plaintiffs and Intervenors herein are wholly insufficient to raise any issue of fact on the matters presented in said Motions for Summary Judgment and on such matters there is no genuine issue as to any material fact and that Defendants are entitled to a judgment as a matter of law, that Plaintiffs and Intervenors take nothing, and that Defendants' Motions for Summary Judgment should be in all things sustained.

It is accordingly ORDERED, ADJUDGED AND DECREED that Plaintiffs and Intervenors remaining as parties herein take nothing by their suit against the Defendants and each of them to recover title to the Pelham Humphries League of land in Jefferson County, Texas, described in grant dated February 14, 1836, which is recorded in the office of the Commissioner of the General Land Office of the State of Texas at Austin, Texas, and in the Spanish Archives of said office in Volume 22 at pages 307 through 310; and recorded in Book M at page 396 of the Deed Records of Jefferson County, Texas, to which records reference is hereby made for all purposes, and to recover damages for oil, gas, sulphur and other minerals taken therefrom, but that all of the claim, right, title and interest of said Plaintiffs and Intervenors therein and thereto shall hereby be divested out of them, and each of them, and shall vest in the Defendants, who shall have their writs of possession and other process out of this Court when and as often as may be necessary to enforce their Judgment.

And the Court having considered the importance of this case as to the rights of the numerous Plaintiffs, Intervenors and Defendants herein, necessitating the great amount of time devoted by the Honorable Pat C. Peyton, Jr. to the preparation of this case for trial, is of opinion and finds that the sum of $2,000.00 would reasonably compensate him for his representation of the Defendants cited by publication herein to which sum the Plaintiffs have agreed. Wherefore, it is ordered that the sum of $2,000.00 be awarded to Pat C. Peyton, Jr. as compensation for his services as attorney for said persons so cited by publication, such sum to be entered and collected as costs in this cause, for which execution shall issue.

It is ordered that the Plaintiffs and Intervenors pay all costs in this cause incurred and that the officers of the Court recover their costs, for which execution shall issue.

It is the further order of the Court that all persons and parties hereto, if any, not specifically disposed of hereby, are dismissed from this cause without prejudice.

Plaintiffs in open court duly excepted to the judgment of the Court and gave notice of appeal to the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, at Beaumont, Texas.

This judgment is rendered and signed on this the 18th day of September, 1963.

/s/ Jack Brookshire
Judge Presiding

APPENDIX "C"

IN THE COURT OF CIVIL APPEALS

SIXTH SUPREME JUDICIAL DISTRICT,

TEXARKANA, TEXAS

Mrs. Coral B. Jones, et al,—Appellants
No. 7574. vs.
W. P. H. McFaddin, et al,—Appellees

District Court of Jefferson County, Texas
Appeals from the

This is an action in trespass to try title to the surface estate and the mineral estate, of the Pelham Humphries league of land that is situated in Jefferson County, Texas. The suit was brought by plaintiff-appellants, Mrs. Coral B. Jones, an heir and agent and attorney in fact, and other agents and attorneys in fact, for and on behalf of approximately three thousand heirs of Pelham Humphries, against defendants-appellees, W. P. H. McFaddin, and about three hundred other defendants. In their second amended original petition, appellants alleged that they were the fee simple owners of the surface estate, and the mineral estate of the Pelham Humphries league of land. They further alleged that the appellees had removed and marketed minerals therefrom of the value of one-half billion dollars.

The appellees answered by general denials and pleas of not guilty. They further plead the 2, 3, 4, 5, 10 and 25 year statutes of limitation. The appellees then filed a motion for summary judgment. The appellants filed two controverting affidavits, but it seems that they do not raise any genuine issues of fact. The trial court in considering the pleadings, the records of deeds on file, the affidavits and the testimony that had been offered by depositions, granted the appellees' motion for summary judgment. It seems that the trial court held that the appellants' title, if any they had, in the event there were no deeds of conveyances, had been divested out of them by the statutes of limitation by appellees' adverse possession.

Appellants excepted to the summary judgment and have perfected their appeal. They attempt to bring forward two points of error, which read as follows:

"1. Whether the Court erred in sustaining the defendants' motion for summary judgment.

2. Whether the Court erred in overruling the plaintiffs' motion to strike defendants' plea of the statutes of limitation."

Appellants, in their brief, take the position that there are genuine issues of fact to be determined by the trial court because, they say, that there is in existence two separate and distinct estates; the surface estate; and the mineral estate. Appellees contend that there must be and is but one general title.

According to the record, W. P. H. McFaddin, and those holding under him from the year 1883 down to the filing of this suit, has an unbroken, continuous, peaceful and adverse possession of all the Humphries league of land. This amounted to about 75 years adverse possession at the time of the trial of this lawsuit.

This property was once the property of Spain. King Charles III promulgated a Mining Ordinance on May 22, 1783, which applied to all Spanish Americans, except Peru. By this ordinance, appellants take the position that the Sovereign of Spain reserved all minerals; thus segregating the mineral estate from the surface estate. From 1821 to 1824, the Republic of Mexico gained its independence from Spain. Mexico then adopted, recognized and applied the Mining Ordinance of the Sovereign of Spain. According to the colonization law of Mexico, Coahuila and Texas became a Republic on March 24, 1825. On February 14, 1835, the Commissioners of Coahuila and Texas issued to Pelham Humphries a patent to eight labors of land. Thereafter, on March 2, 1836, the State of Texas became a Sovereign Nation and established itself as the Republic of Texas. The Republic of Texas adopted, recognized and applied the Mining Ordinance of 1783 issued by King Charles III, the King of Spain, as the law of the land. The Sovereign Nation of Texas became one of the States of the United States on December 29, 1847. In 1866, the State of Texas adopted the Constitutional Relinquishment Act, Art. VII, Sec. 39, whereby it released to the owners of the soil all mining and mineral substances, which reads as follows:

> "That the State of Texas hereby **releases** to the **owners of the soil** all **mines** and **mineral** substances that may be on the same, subject to such uniform rate of taxation as the Legislature may impose." (emphasis added)

On December 31, 1883, W. P. H. McFaddin purchased the Pelham (alias William) Humphries league of land from

R. P. Carswell, the agent and attorney in fact for William and Mira English. It recited in the deed that it was the same tract of land that was conveyed on **February 14, 1836,** by **William Huhphries (alias Pelham Humphries) to William English.** The deed to McFaddin was recorded on January 10, 1884. In 1884, McFaddin enclosed the entire league with a substantial cattle-proof fence. This was more than 75 years prior to the filing of this suit.

Prior to 1901, McFaddin issued an oil and gas lease. In 1901, The Lucas well blew in and the oil field was named the "Spindletop Oil Field". There has been continuous production of minerals ever since. There are other fact statements that could be repeated, but in view of the length of this opinion, it seems that sufficient fact statements have been given.

Appellants take the position that the mineral estate has never merged with the surface estate since it was separated by the Sovereign of Spain. They take the position that the Spanish Mining Ordinance of 1783 severed the mineral estate from the surface estate. They take the further postion that the severed mineral estate reserved to the Crown of Spain and subsequently to the State of Texas was an estate in fee simple with equal dignity with the surface. They take the position that the surface estate, and the mineral, each being fee simple estates, could not be merged by the Constitutional Release of 1866. They say the possession of the surface, although sufficient to cure limitation to the surface, would not mature limitation title to the severed estate.

Appellees take the adverse position. They say the right of the Sovereign Crown of Spain in the minerals was not a separate and distinct fee simple estate, and was not of equal dignity with the surface. They say the reservation by Spain was a separate right, but not of equal dignity with the surface, and did not prevent a merger. They further take the position that the doctrines of merger and non-merger and its application were upon the intention of the State. The Constitutional Release of the minerals in 1866 evidenced the intent to release to the owners of the soil all of the title of the Sovereign to the mines and minerals for the purpose of combining the Sovereign's rights in the mineral estate with the surface estate in such manner as to give to the soil owners the general title to the entire property; not to two severed estates.

In the event the intention of the State of Texas at the time of the Constitutional Release in 1866 does not govern,

then we will have to look to the intention of the parties at the time of the purchase of the Humphries league of land in 1883. At that time William and Mira English were the owners of the soil (surface), as well as the mineral interest. They conveyed all the right, title and interest that they had in and to the league of land to McFaddin. The Constitutional Release of the minerals was not executed during the time that the soil was owned by Pelham Humphries, or his heirs. The deed from Humphries to English was executed on February 14, 1836. The Constitutional Release was not executed until 1866. Regardless of the intent of the parties, according to the record in the case, the Humphries have no cause of action. According to their theory, they have never been the owners of the mineral estate under the Humphries league of land.

The intention of the parties governs as to whether or not the mineral estate merged with the soil. It seems that the action of English. the owner of the soil at the time of the Constitution Release, establishes such intent, and the minerals merged into a fee simple estate with the surface.

According to the reservations by Spain, the only mineral reservation that was made was to the gold, silver and quicksilver and their kingdoms, as well as the income from the salt wells, fisheries, and works in iron and other metals. See Chap. 5, Spanish Mining Ordinance of 1783, Secs. 1, 2 and 3. Also see the Basic Civil Law of Spain, Partidas iii, Title 320, and iii, Law 11. If appellants are claiming under the Mining Ordinance of 1783, it must be under Section 1 of Chapter 5, which says that: "The **mines** are the property of the Royal Crown". (emphasis added). According to Las Siette Partidas, the Crown was reserving only the **income** from the **mines.** The Mining Ordinance of 1783, Sec. 24, required the payment of damages to the **owners of the soil** where the **mines** were located to the extent that the surface was harmed.

The Supreme Court of Texas indicated in an opinion, State v. Parker, 61 Tex. 265, that the Constitutional Release would apply both retrospectively and prospectively. It held that the minerals under lands previously held, as well as thereafter patented by the State, were released by the state to the present owners. In 1912, Cox v. Robison, 105 Tex. 426, 150 S. W. 1149, the Supreme Court of Texas gave the Constitutional Release a thorough analysis and outlined two alternate decisions that could be made. One alternate was intended by the framers of the Constitutional Release to release the minerals to present owners of the soil and to

the future patentees and the state would be without authority in any way to control the disposition of future minerals; and, the constitutional provision would amount to the limitation on the power of legislature to reserve minerals in the future. The second alternative construction of the Constitutional Release was the one adopted by the court, which reads as follows:

> "If, however, it was curative in its nature, and retrospective in its effect, and intended as an extinguishment of the rights of the State only in those mines and minerals in soil owned at the time of its adoption, the title of the State to all other mines and minerals in lands of the public domain remained unimpaired and unaffected; and its authority to provide by law that their reservation should be made in future conveyances of such lands must be recognized."

We hold that as a result of the Constitutional Release of 1866 of the minerals to the owners of the soil, that the minerals and the soil became merged into a general title, and if necessary, is subject to limitation title by possession of the minerals in this case. There has actually been possession of the minerals since the year 1901, and the holders of the minerals have acquired title by limitation.

The appellees have filed a very able brief in this case. It would lead far afield to a discussion of the points of error not necessary to a decision in this case. They cite Amaya v. Sun Oil Company, Civil Action No. 664, as well as Amaya et al v. Hewit & Dougherty et al, Civil Action No. 663, and quoted freely from Judge James Allred's holding. They cite Humphrey-Mexia Co. v. Gammon (Tex. Sup. Ct.) 113 Tex. 247, 254 S. W. 296; Cox v. Robison, supra; Carlos B. Masterson, 30 T. L. R., 331, in which they point out that under the common law doctrine that two estates of equal dignity can not be merged into one applicable to a constitutional amendment. The Court held that regardless of any technical common law, the two estates were merged.

The points of error are overruled and the judgment of the trial court is affirmed.

MATT DAVIS
Associate Justice

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